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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-4346-2022 (O&M)
Date of Decision: 11.04.2023**

Dharmender and others

...Petitioners

Versus

Mukesh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Abhinav Sood, Advocate
for Mr. Vikram Singh, Advocate
for the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 29.08.2022 (Annexure P-4), passed by Ld. Additional Judge (Sr. Divn.), Bahadurgarh, whereby an application under Order 7 Rule 11 CPC filed by petitioners/defendants, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Contesting respondent herein/plaintiff has filed a suit for declaration qua ownership and possession of the suit land as per respective shares of the parties with consequential relief of permanent injunction. Plaintiff pleads in her suit that Anup Singh (father of plaintiff, defendants No.1 to 3 and proforma respondents) being *Karta* of family was recorded owner of 1/4 share in the ancestral coparcenary land measuring 13 Kanals 4 Marlas, 1/24 share in the land measuring 1 Kanal 4 Marlas and 1/24 share in the land measuring 80 Kanals vide Jamabandi for the year 2008-2009. It is alleged by plaintiff that defendants No.1 to 4 hatched a conspiracy to prepare and procure a release deed dated 14.10.2010 executed and registered by Anup Singh (now deceased) in favour of defendants No.1 & 2 only. Basis thereof, mutation has also been entered in the revenue record.

It is further alleged by plaintiff that on the basis of release deed dated 14.10.2010 and sale deed dated 05.05.2017, contesting defendants are threatening to alienate the said property. Plaintiff alleges that suit land is ancestral property and all the parties herein acquired the right in the said property by virtue of their birth. Therefore, the relinquishment deed could not be executed in favour of defendants No.1 & 2 alone.

2.2. Opposing the suit, an application was filed by petitioner/defendants No.1 to 4 under Order 7 Rule 11 CPC for rejection of plaint itself. It is contended that the civil suit has been filed for declaration and permanent injunction without seeking possession and hence, the it is liable to be rejected being not maintainable. Further it is alleged that plaint is liable to be rejected as respondent/plaintiff has not affixed deficient court fees as *ad valorem* court fees has not been affixed.

2.3. Ld. trial Court vide impugned order dismissed the said application, the relevant part of which is reproduced herein below:

“XXXX

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9. It is cardinal principle of interpretation of pleadings that the pleadings have to be read as a whole to ascertain true import of pleadings. Meaning thereby, the substance of the pleadings is to be seen and not merely its form. No addition or subtraction can be done to pleadings by the court to interpret the intentions of the parties. Further, the grounds of rejection must be from the averments made in the plaint itself. Meaning thereby, while deciding application for rejection of plaint, the plaint's averments shall only be taken into consideration and the plaint is to be read as whole. At this stage, the averments of the defendant made in written statement are not taken into consideration. The rejection of the plaint is demurrer's claim i.e evidence are not to be taken for rejection except examination of parties under order 10 of CPC but that too not to the extent of asking them to lead evidences.

10. Taking into accounts, the first ground for rejection of plaint, i.e. not seeking relief of possession by the plaintiff. As mentioned in the plaint, the suit property is averred to be an ancestral property. Although, para No. 4 mentions about a gift deed dated 04.01.1963 in favour of Shree Chand and Bharat Singh but the same cannot be

considered as conclusive proof of the nature of the suit property being their self acquired properties as the nature of suit property is in dispute as cannot be decided without taking evidence on record.

11. Apart from this, the question of possession is also to be decided on merits and only then, the application of the law regarding maintainability of suit can be decided.

*12. Further, the impugned sale deed No. 815 dated 05.05.2017 is executed between Satpal Girdhar and Krishan, Samunder Singh, Om Parkash, Sajjan and Dharmender although the consideration amount was mentioned as Rs. 2 Crore, but the plaintiff is not a party to this sale deed. The law on this point has been very clearly settled in case titled as **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors., passed in Civil Appeal Nos. 2811-2813 of 2010** of Supreme Court of India, which reflects that:*

“ Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a nonexecutant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value

of the property calculated in the manner provided for by clause (v) of Section 7.”

13. Even otherwise, the ad valorem court fee if decided to be inadequate can always be asked to be paid by the plaintiff any time before the judgment. Hence, the question of court fee shall also be decided on merits.

14. Further, the question of limitation is also a mixed question of law and facts, which cannot be decided at this stage. Moreover, plaintiff's para No. 15 & 17 patently show that the cause of action accrued on 06.09.2017 when the defendants finally refused to accept the proposal of the plaintiff and is accruing day by day until the release deed is set aside and the defendants withdrew their threats. ”

3. Petitioners' contentions herein are that the suit property was the self-acquired property of Anup Singh, deceased father of the plaintiff and defendants No. 1-4, 6 and 7; that Anup Singh's father Shri Chand had got a share in part of the suit property on the basis of gift deed dated 04.01.1963 and thus Anup Singh had absolute right of disposition of the entire suit property; that the plaintiff's challenge to the release deed dated 14.10.2010 executed by Anup Singh in favour of defendants No. 1-2 is time barred and that since cancellation of sale deed dated 05.05.2017 has also sought, the plaintiff is liable to pay ad-valorem court fee. Further, it is contended that the plaintiff has not sought relief of possession of suit property, owing to which her suit for declaration and injunction is not maintainable.

4. All these contentions have been elaborately dealt with, duly rejected, and rightly so, by the learned trial Court vide impugned order, of which the relevant part has been extracted above.

5. In my opinion, quite cogent and convincing reasons have been given by the learned trial Court for dismissal of the petitioner's application. Learned counsel for the petitioner has not been able to convince me how the plaint is ex facie liable to rejection. I am inclined to agree with the view taken by the learned

trial Court. None of the counts/ingredients as envisaged under order 7 rule 11 of the CPC are meted out herein.

6. No material irregularity in law or procedure has thus been committed by Ld. Court below while passing the order impugned herein so as to call for interference in exercise of extraordinary revisional jurisdiction.

7. In view of the aforesaid, I find no substance in this petition. Same is dismissed being devoid of merit. Needless to say, dismissal of the revision shall not preclude the defendants to take their defense in the written statement as pleaded/taken in the application under Order 7 Rule 11 CPC.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 11, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No